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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,232	01/06/2004	James P. Lattari	WD-314J	4777
7590	01/25/2006		EXAMINER	
Iandiorio & Teska 260 Bear Hill Road Waltham, MA 02451-1018			WELCH, GARY L	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 01/25/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/752,232	LATTARI, JAMES P.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gary L. Welch	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 August 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 August 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 08222005.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Response to Amendment***

1. Applicant's amendment, filed 12 August 2005, has been reviewed and considered. Claims 18-20 are canceled with claims 1-17 currently pending. In view of applicant's arguments, the previous prior art rejections are withdrawn. However, an updated search and further review of the prior art of record has prompted the presentation of the following rejections.

### ***Claim Rejections - 35 USC § 102***

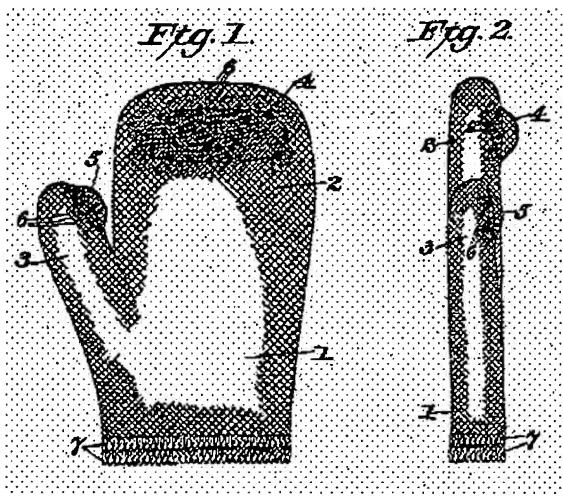
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, 7-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Du Bois (U.S. 1,250,150).

Du Bois discloses a protective glove 1 having a glove portion made from a mesh material and a wrist portion made from a mesh material. An elastic element 7 is attached to the wrist portion in the form of a coiled spring (Col. 2, lines 67-72) that is wider than it is thick to improve comfort.



With regard to claim 3, each coil of the coiled spring extends parallel to the glove portion for the width of the coiled spring and then turns perpendicular to the glove portion for the thickness of the coiled spring.

With regard to claim 4, the turn of each coil is rounded.

With regard to claim 7, the coiled spring is made from metal wire.

With regard to claim 8, the coiled spring is circumferentially disposed around the wrist portion of the glove and is therefore welded at each end so as to form a closed loop.

With regard to claim 9, the coils of the coil spring extend through the terminal links of the wrist portion.

With regard to claim 11, the invention is disclosed above. The recitation "is color coded with a colored coating that complies with the 21 CFR 175.300" is considered as a product by process claim. Section 2113 of the M.P.E.P. states that even though the product by process claims are limited by and defined by the process, the determination of patentability is based on the product itself. The

patentability of a product does not depend on its method of production. If the product in the product by process claims is the same or obvious form of a product of the prior art, the claim is unpatentable even though the product was made by a different process. The Patent Office bears a lesser burden of proof in making out a case of *prima facie* obviousness for product by process claims. Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to the applicant to come forward with evidence establishing unobvious difference between the claimed product and the prior art product. The Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith. Therefore, the claim is treated as a product by process claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 2, 5-6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Du Bois (U.S. 1,250,150).

Du Bois discloses the invention substantially as claimed above.

However, Du Bois does not disclose that the coiled spring is at least twice as wide as it is thick.

A review of the applicant's disclosure does not reveal any criticality for the coiled spring being at least twice as wide as it is thick (i.e., why is twice as wide as it is thick better than any other combination?). Therefore, it would have been obvious through routine experimentation to select and size the coil spring of Du Bois to be at least twice as wide as it is thick in order to provide a predetermined level of "holding power" so as to ensure that the glove will properly remain positioned onto the wearer's hand without the risk of the glove falling down or off of the user's hand during use.

With regard to claim 4, the turn of each coil is rounded.

With regard to claim 5, the claimed values for the number of coils per inch (i.e., between 9 and 11) is not disclosed by Du Bois. However, a review of the applicant's disclosure also does not reveal any criticality for the number of coils per inch being between 9 and 11 (i.e., why is 9 to 11 better than 8 to 10 or some other combination?). Therefore, it would have been obvious through routine experimentation to provide a coil spring as taught by Du Bois but having the number of coils per inch to fall between 9 and 11 in order to provide a predetermined level of elasticity for enabling the glove to be stretched over a user's hand and forming thereto.

With regard to claim 6, the claimed values for the width and thickness of each coil is rejected for the same reasoning as set forth in the above rejection to claim 5.

With regard to claim 15, the invention is disclosed in the above rejections.

6. Claims 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Du Bois (U.S. 1,250,150) in view of Cutshall (U.S. 5,231,700).

Du Bois discloses the invention substantially as claimed above.

However, Du Bois does not disclose that the coiled spring is color coded with different colors to indicate different glove sizes.

Cutshall teaches a protective glove 10 having the wrist portion color-coded to indicate glove size (see claim 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to color code the wrist portion or coiled spring of Du Bois as taught by Cutshall in order to indicate different sized gloves.

With regard to claim 16, the invention is disclosed in the above rejected claim.

7. Claims 12-14 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Du Bois (U.S. 1,250,150) in view of van Marwijk et al. (U.S. 5,862,521).

Du Bois discloses the invention substantially as claimed above.

However, Du Bois does not disclose that a forearm portion.

Van Marwijk et al. teaches a protective glove 1 having a glove portion and wrist portion fabricated from a mesh material 3. The glove 1 also has a forearm

portion 2 for providing an even greater degree of protection to a user by protecting his or her forearm.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a forearm portion as taught by van Marwijk et al. to the glove of Du Bois so as to provide an even greater degree of protection to the user by protecting his or her forearms.

With regard to claim 13, Du Bois teaches an elastic element attached in the form of a coiled spring that is wider than it is thick. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching to the forearm portion.

With regard to claim 14, one coiled spring is attached to the wrist portion and one coiled spring is attached to the forearm portion.

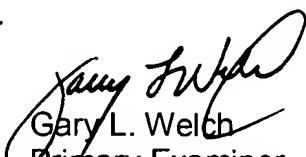
With regard to claim 17, the invention is disclosed in the above rejections.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary L. Welch whose telephone number is (571) 272-4996. The examiner can normally be reached on Mon-Fri 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary L. Welch  
Primary Examiner  
Art Unit 3765

glw